

Zoning Board of Appeals Minutes 11/18/2015

MASHPEE ZONING BOARD OF APPEALS NOVEMBER 18, 2015 MEETING MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, November 18, 2015, at 6:00 p.m. in the Ockway Room at the Mashpee Town Hall, 16 Great Neck Road North, Mashpee, MA. Chairman, Jonathan D. Furbush, Vice Chairman, William A. Blaisdell, Board Members Richard Jodka, Domingo K. DeBarros and Associate Members Scott Goldstein, Brad Pittsley and Jim Gould were present. Board Member Ron Bonvie was absent.

Mr. Furbush opened the meeting at 6:00 pm and introduced the recently appointed Associate Members, Jim Gould and Brad Pittsley.

Mr. Furbush announced the four regular Board members and Associate Scott Goldstein was sitting in on the following hearing.

48 James Circle: Owner, Christine S. Bader requests a Written Finding under Article V §174-17 and §174-20 to replace an existing carport and rebuild into a single-car garage, with deck above on property located in an R-5 Zoning District, (Map 71 Parcel 34), Mashpee, MA.

Ms. Jean Bowden representing the petitioners who currently have a building permit for some minor remodeling. The Written Finding application is to convert the existing carport into an attached garage. The lot coverage will be reduced from 24.3% to 19.9% by removing the hot tub, shed and a portion of the decks.

Mr. Furbush asked if the deck above the garage will remain. Mr. Goldstein asked if the new garage will be in the exact same footprint. Mr. Goldstein said the garage does not increase the lot coverage, and because it's a pre-existing structure, you do not have to remove the decking. The applicant cannot return to the Board for any future changes.

Mr. Furbush read the Board of Health comments into the record; "Septic inspection required prior to issuance of building permit".

Mr. Furbush read the DPW comments into the record; "The above property is located on a Town road. I would ask that the Zoning Board impose a condition requiring that the addition (single-car garage) have gutters and downspouts that are connected to a dry well so that storm water is contained onsite."

Mr. Furbush read the Inspection Department comments into the record; "The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as "High Sensitivity". The applicant is seeking a Written Finding under Article V §174-17 regarding a determination from the Board if the removal of the carport and replacing it with a single car garage with a deck above would increase the non-conforming nature of the home.

Mr. Blaisdell made a motion to approve the application with the following conditions:

- The Board has determined that the applicant meets all the conditions of a Written Finding under Mass General Law 40A Section 6.
- Property is in the Pre-contact Archaeology Sensitivity area – listed as "High Sensitivity".
- A Certified Plot Plan for Christine S. Bader 48 James Circle in Mashpee, MA. Prepared by Cape & Island Eng., Summerfield Park, 800 Falmouth Road, Suite 301C, Mashpee, MA. Sheet No.: 1 of 1 Date: 6/8/15, DWG File: James_48, Scale: As Noted, Approved by: CC, Checked by: MC, Drawn by: WD. Signed by Christopher Costa P.L.S. dated 7/21/15. Plan revised to show a portion of decks, shed and hot tub to be removed. Revision 1, dated 7/21/15, WD, CC by APPR.
- A Plan titled "Interior Renovations" "Garage Plans" dated 8/23/15 by Capizzi Home Improvement, Pages 5, 6, and 7.

Mr. Jodka, seconded, yes, Mr. Furbush, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor of construction of a new garage with deck above. The Board determined the project is not more detrimental to the neighborhood than what currently exists today.

110 Wheeler Road: Owners, Gloria and Mark Salgueiro, request a Variance under §174-31 of the Zoning By-laws for relief from lot size and frontage requirements to deem lot buildable on property located in an R-5 Zoning District, (Map 57 Parcel 20), Mashpee, MA.

Mr. Kevin Kirrane, Attorney represented the owners of the vacant lot. He provided the Board with a plot plan, a narrative that included a letter from the homeowner, and a 2003 recorded variance decision. This lot was deemed to have been merged with the house lot on the adjacent property. In 1996, the Salgueiro's predecessor had title and applied for variance relief to build on this lot. As indicated in Mrs. Salgueiro's letter, she assumed that the lot would be considered a distinct buildable lot, and had no immediate plans to build. When she decided it was time to build she found out the Town had considered the lot merged with the house on the adjacent lot. In 2003, the Salgueiro's applied for variance relief from the Board of Appeals and was granted. The letter also indicated that she had plans to build on this lot, but was unable to at that time for personal reasons. The Salgueiro's have relocated to Florida, and they do not own the house lot that was merged with the vacant lot, so they are seeking variance relief for purposes to be able to build on this vacant lot.

The lot itself is 29,600 sq. ft. and has 100+ feet of frontage along Wheeler Road. The R5 Zoning District now requires 80,000 sq. ft. and 150 feet of frontage. Therefore, the applicant is seeking a 50 ft. variance on the front, and a 50,000 variance from the lot size requirements. The lot has been taxed as a buildable lot since the Salgueiro's purchased it in 1997, and are paying taxes. Mr. Kirrane suggested the Board can grant relief and there is no detriment to the Town to allow for construction of a home for this lot, and is consistent with other lots in the neighborhood. Also a house can be constructed without any further relief from the Zoning Board of Appeals.

Mr. Furbush read comments from Tom Fudala, Town Planner into the record; "Lot size and frontage are not legally subject to variance by the ZBA per the Mass Supreme Court an unbuildable non-conforming lot cannot be deemed buildable." Jonathan also summarized another memo from Tom Fudala dated 10/28/2015 regarding 78 Deerfield Road being a legal lot when it was created. But, by the time the 2002 variance approval which was overturned by the Land Court, it did not meet the dimensional requirements."

Mr. Kirrane stated that the Board has the ability to grant variance relief as it has in the past.

Mr. Jodka read the Board of Health comments into the record; "Property not in Zone II. Not restricted to number of bedrooms except if greater than five bedrooms, a denite system is required."

Mr. Jodka read the Conservation Comments into the record; "As far as I know, we have not received a permit application for any proposed work on this property. A portion of the property does lie within wetlands jurisdiction."

Mr. Jodka read the Inspection Department comments into the record; "The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as "High Sensitivity". Seeking a Variance, from Table §174-31, for the being short 50 feet of frontage (need 150 feet) and short 30,400 sq. feet of lot size (80,000 required).

Mr. Gould mentioned that his prior experience of being on the Conservation Committee in another Town, if whoever objects there is land court as a last resort.

Mr. Blaisdell made a motion to approve the application, with the following conditions;

- The property is in the Pre-contact Archaeology Sensitivity area – listed as "High Sensitivity".
- A Conceptual Site Plan for Mark & Gloria Salgueiro, PO Box 1347, Mashpee, MA 02649. Prepared by Cape & Islands Engineering, Summerfield Park, 800 Falmouth Road, Suite 301C, Mashpee, MA, Existing Conditions Plan, 110 Wheeler Road, Mashpee, MA. Sheet No.: 1 of 1, Dated: 9/23/15, DWG File: Wheeler_110, Scale: As Noted, Approved by: CC, Checked by: MC, Drawn by: WD.

The Variance request would be a 50 ft. variance on the front, and a 50,000 variance from the lot size requirements.

Mr. Jodka, seconded, yes, Mr. DeBarros, yes, Mr. Goldstein, yes, Mr. Blaisdell, yes, and Mr. Furbush, no. The Board voted 4-1 in favor of variance relief of 50 feet in the front, and 50,000 from the lot size requirements for the lot located at 110 Wheeler Road.

379 Mashpee Neck Road: Owners, Donna J. and Steven P. Fuller, Trustees request a Written Finding under Article V §174-17 to raze and replace an existing dwelling on property located in an R3 Zoning District, (Map 90 Parcel 57), Mashpee, MA.

Mr. Steve Cook, Cotuit Bay Design represented the petitioners for this tear down and rebuild project. Also present was Steve Fuller,

homeowner. The Fullers want to tear down their existing small one story house and construct a two story house. The existing house does not meet the current and future requirements for their family. The existing house is non-conforming at 31.4 feet off the front property line, and requires 40 feet. The existing house does not meet the flood zone requirements. The existing house is across from Popponesset Bay and abuts Mashpee Neck Road, and Pirates Cove.

The new design would be to square off the new home, and pushing everything back beyond the buffer zones to meet all zoning guidelines and setbacks for the R3 zoning district. The lot coverage is currently 10.4% and will increase to 15.06% which is well below the 20% the lot coverage restriction. A new septic system will be installed on the Captains Row side outside the buffer zones, and will be brought up to flood zone requirements. The setbacks on the north side are 18.2 ft. and 18 ft. on the south, the west at 40.9 ft. off Captains Row, and on the east at 3.6 ft. There is not setback relief need.

Mr. Jodka read the Inspection Department comments into the record; “The area is zoned R3 and is in the Pre-contact Archaeology Sensitivity area – listed as “Moderate Sensitivity”. The applicant is seeking a Written Finding under Article V §174-17 regarding a determination from the Board for the removal of the existing home and shed and replacing it with a single family home. The proposed single family home is within the AE Flood Zone. All work shall conform to the MA State Building Code requirements for construction within an AE Flood Zone.”

Mr. Jodka read the Board of the Health comments into the record; “Not in Zone II, not restricted to number of bedrooms. Why isn’t the septic designed to account for potential build-out of unfinished space above garage (possible 4th bedroom). That area is closed off for privacy so once it is heated it will be called a bedroom by BOH.”

Mr. Cook said he revised the plans to put in a 6 ft. cased opening above garage to be used for storage. The Building Plans will be revised to show a 6 ft. cased opening.

Mr. Jodka read the Conservation Comments into the record; “This project has been approved by the Conservation Commission at our October 9th meeting.”

Mr. Furbush read the DPW comments into the record; “The above property is located on a Town road. The new driveway will require a curb cut permit from the DPW prior to start of demolition/construction.”

Mr. Blaisdell made a motion to approve the project conditioned on the following;

- The Board has determined that the applicant meets all the conditions of a Written Finding under Mass General Law 40A Section 6.
- -The area is zoned R3 and is in the Pre-contact Archaeology Sensitivity area – listed as “Moderate Sensitivity”.
- -The proposed single family home is within the AE Flood Zone. All work shall conform to the MA State Building Code requirements for construction within an AE Flood Zone.
- An Existing and Proposed Site Plan titled: “Proposed House Reconstruction”, and subsurface sewage disposal system prepared for Steven & Donna Fuller, 379 Mashpee Neck Road, Mashpee, MA, from BSS Design Engineering & Surveying, 164 Katharine Lee Bates Rd, Falmouth, MA 02540, Scale: 1” = 20’, date: September 10, 2015, draw by: TJB, Job number: 14238, Revisions: Changed driveway from paved to crushed stone or shell, Sept. 16, 2015, TJB. Drawing number B22-84. Signed by Thomas Jackson Bunker, and Jeffrey Edwin Ryther, Registered Professional Engineers.
- Prior to construction a curb cut will be required by the Department of Public Works.

Mr. Jodka, seconded, yes, Mr. Furbush, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor of the raze and replace project and will become more conforming than what currently exists.

18 East Road: Owner, Alan Hatt requests a Written Finding under Article V §174-17 to allow for construction of a deck and stairs on property located in an R-5 Zoning District, (Map 1 Parcel 7), Mashpee, MA.

Mr. Alan Hatt represented himself and stated he meets all the setback requirements except for the 40 feet in the front. He’s requesting 3 ft. from the front.

Mr. Furbush stated the project does not require relief from the front because the closest distance from the back street is 22.2 ft., and the plan depicts 26.1 feet.

Mr. Blaisdell stated the project is not more detrimental than what currently exists.

Mr. Furbush read the Conservation Comments; “property is not within wetlands jurisdiction.”

Mr. Furbush read the Board of Health comments into the record; “owner and builder have been in to discuss the project with the Board of Health. The plans have been revised to accommodate the septic tank. No further comments.”

Mr. Jodka read the Inspection Department comments into the record; “The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as “High Sensitivity”. Seeking a Written Finding under Article V §174-17 regarding a determination from the Board if the construction of a new deck would increase the non-conforming nature of the home.”

Mr. Blaisdell made a motion to approve the project with the following conditions;

- The Board has determined that the applicant meets all the conditions of a Written Finding under Mass General Law 40A Section 6.
- The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as “High Sensitivity”.
- A Building Plot Plan; showing proposed decks, prepared exclusively for the purpose of obtaining a building permit, not for any other use. Location: 18 East Road, Mashpee, MA. Scale: 1” = 20’, Date: September 11, 2015, Reference: Assess Map 1 Parcel 17, Prepared for Alan Hatt. Prepared by: Down Cape Engineering, Inc. Civil Engineers, Land Surveyors, 939 Main St., Yarmouthport, MA. Date: 9/11/2015, signed by Daniel A. Ojala, No. 40980, Professional Land Surveyor. Registered Land Surveyor.

Mr. Jodka seconded, yes, Mr. Goldstein, yes, Mr. Furbush, yes, and Mr. DeBarros, yes. All were in favor of the deck and stairs project and determined it would not be more detrimental than what currently exists.

156 Waterway: Owner, Jason Stone requests a Variance under §174-31 of the Zoning Bylaws for relief from the front setback to allow for construction of a 10 x 12 shed on property located in an R-3 Zoning District, (Map 105 Parcel 238), Mashpee, MA.

Mr. Scott Goldstein stepped down from this hearing. Associate Member, Mr. Gould was sitting in on this hearing.

Mr. Kevin Kirrane, Attorney represented the homeowner for the shed project. Also present Jason Stone, homeowner. Mr. Kirrane said that Mr. Stone received some inaccurate information when he purchased the shed. He was led to believe that the 120 sq. ft. shed didn’t have setback issues. However, under the bylaw the setbacks for a shed is five feet from the rear and side yard, and 40 feet from the front yard. As a result, Mr. Stone bought the shed and located it on his property and discovered that he needed relief from the Board as it relates to the location. The shed is only approximately 9.8 ft. from the front yard lot line. The front lot line is 10 feet from the paved surface. Mr. Stone wants to store a small watercraft and prefers to have the shed in the front because the property has a significant drop from the street and toward the water. He considers this a hardship as it relates to the topography of the lot.

Mr. Furbush said he would not have a problem if the shed be relocated up against the neighbor’s shed. He also suggested storing the watercraft at an off-site location.

Mr. Bill Blaisdell made a motion to accept the variance request for the 10 x 12 shed. Mr. Gould seconded, no, Mr. DeBarros, yes, Mr. Jodka, no, Mr. Blaisdell, no, and Mr. Furbush, no. The Board denied the application for the 10 x 12 shed because it does not meet the setback requirements.

366 Monomoscoy Road: Owner, Plato A. Spilios requests a Special Permit under §174-25.I (9) of the Zoning Bylaws for an existing dock, ramp and float in an R-3 Zoning District, (Map 125 Parcel 11), Mashpee, MA. (Mass DEP License #5747 was never recorded with Barnstable Registry of Deeds).

Mr. Paul Doran, Professional Engineer represented the petitioner. He was in front of the Board twenty two years ago for the special permit granted to Plato’s grandparents under the Amnesty Program through the Mass DEP under Chapter 91 Waterways Program. The Special Permit was issued by the Zoning Board of Appeals on September 21, 1993. The dock has not changed since 1994 and is in the same footprint as noted on the site plan. At the time, there was one condition issued by the Conservation Commission is removal of the extra float; everything else remains the same.

The reason Mr. Spilios reapplied to the Zoning Board is because his grandfather passed away before filing the special permit with the registry of deeds, and it expired within 60 days.

Mr. Goldstein asked if the harbormaster was notified. Mr. Spilios delivered the application personally to the harbormaster. The float needs to be identified with black lettering as indicated by the DEP.

Mr. Furbush read the Conservation Comments into the record; “366 Monomoscoy also has an existing permit for the dock/ramp and float – all set.”

Mr. Jodka read the abutter letters from Marlene M. Boehner, and James and Nina Hanks stating that they approved the dock.

Mr. Furbush noted that the original special permit had passed back in 1993. He read the Conservation Commission letter dated October 6, 2015 to Paul B. Doran, P.E. into the record.

Mr. Blaisdell made a motion to approve the application for a special permit under the following conditions;

- The area is zoned R5 and is in the Pre-contact Archaeology Sensitivity area – listed as “High Sensitivity”.
- Plans: Existing Dock/Float for 366 Monomoscoy Road, Mashpee, MA. Plan Index – Sheet 0- Title Sheet, 1-Site Plan, 2-Plan & Elevation, 3-Plans, Sections, Details, 4-Sections. Plans Accompanying the Petition of Plato A. Spilios for a BRP WW01 Chapter 91 Application Existing Dock, 366 Monomoscoy Rd., Mashpee, MA 02649 Transmittal # 267631. Signed by Paul B. Doran, P.E., Consulting Engineer, 189 Rideout Rd., Hollis, NH 03049.

Mr. Jodka seconded, yes, Mr. Furbush, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor of the dock because there are no changes to the original footprint.

Mr. Goldstein made a motion to approve the 2016 Hearings Schedule. All were in favor. Mr. Goldstein made a motion to approve the September 9, 2015 and October 28, 2015 meeting minutes. All were in favor. Mr. DeBarros made a motion to adjourn. All were in favor.

Respectfully submitted;

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals